

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACS of Anchorage, Inc. and ACS of Fairbanks, Inc.'s	)	WC Docket No. 02-201
Emergency Petition for Declaratory Ruling and	)	
Other Relief Pursuant to Sections 201(b) and 252(e)(5)	)	
Of the Communications Act	)	
_____	)	

**COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION**

The Alaska Telephone Association ("ATA") represents fourteen rural incumbent local exchange carriers. Within the service areas of these companies are the most remote communities in the United States; the vast majority of which are accessible only by air and water.

Many of the issues raised by ACS for action by the Commission are of considerable concern, collectively and individually, to the members of this association. We welcome this opportunity to make the Commission aware of the potential and current adverse impact on the telecommunications network and the customers it serves in Alaska if the direction of policy does not change.

**Termination of Rural Exemption in Fairbanks**

With the exception of the Anchorage market, all of Alaska is designated "rural" for purposes of consideration of lifting a "rural exemption" prior to requiring negotiation of an interconnection agreement and establishing pricing for unbundled network elements ("UNE"). As stated by ACS in its petition, Fairbanks' rural exemption was lifted by the Alaska Public Utilities Commission and, upon reconsideration, by its successor, the

Regulatory Commission of Alaska (“RCA”). In both instances the burden of proof to demonstrate undue economic burden was placed upon the incumbent carrier and despite the Eighth Circuit’s vacation of 47 C.F.R. 51.405(a), (c), and (d) in *Iowa Utilities Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), the state commission’s decision remains unchanged.

In its consideration of lifting the rural exemption in Fairbanks, the member companies of this association are unable to find any indication of deference by the state commission to Congress’ concern that allowing multiple providers to serve small rural markets through unbundled interconnection with the rural carrier might not serve the interests of consumers. With, as a precedent, this disregard by the state regulatory commission of Congress’ clear intent, each ATA member waits in apprehensive anticipation of receiving a bona fide request and the resultant pro forma lifting of its rural exemption.

#### Current UNE Rates in Fairbanks

We agree with ACS that the UNE loop price for Fairbanks of \$19.19 is not based on the ILEC’s costs and is patently deficient. Along with this unjustifiably low price, the competitive local exchange carrier (“CLEC”) captures universal service funding based on ACS’ costs in the amount of \$9.40, although an incumbent local exchange carrier (“ILEC”) providing service at a monthly cost of \$19.19 would receive no universal service funding as that rate is less than 115% of the national average. A true policy of competitive neutrality would demand that no provider – ILEC or CLEC – would receive universal service funding unless their loop costs – whether UNEs or facilities-based – exceeded the 115% threshold.

As maintained by the National Telecommunications Cooperative Association (“NTCA”) in a recent filing, “this approach effectively defeats the Commission’s guiding principle of ‘competitive neutrality.’”<sup>1</sup> The public suffers because there is no incentive for either the ILEC or the CLEC to invest in infrastructure; the CLEC because it can purchase loops at less than cost and the ILEC because it has little likelihood of recovering its investment. Today’s faulty regulatory environment incents a new entrant to compete for the subsidy rather than the customer.

#### UNE Prices Should be Based on ILEC Costs

As noted by the ACS petition, the Commission intends that each state commission consider the forward looking costs of each specific ILEC in its determination of permanent UNE rates. The admonition for state review is applicable to all states, even those with similar population densities, common weather conditions and terrain. Alaska is like no other state. Even within the service areas of individual ILECs, conditions differ dramatically – even incredibly! In a petition to this Commission, the State of Alaska expounded on the unique demographics of the state by saying “Communities in rural Alaska differ substantially from rural communities in the rest of the United States. Most rural Alaskan communities are far smaller than rural communities elsewhere.... Outside of Anchorage, the population density of Alaska is only about 0.5 person per square mile”.<sup>2</sup> With both the unique demographics and extreme geographic conditions, it is

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<sup>1</sup> Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. Section 54.307 *et seq.*, (NTCA, July 26, 2002, p. 8).

<sup>2</sup> CC Docket No. 96-45, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling, (January 29, 2001, p. 5-6).

unconscionable that in Alaska, UNE rates be established in a manner other than a cost study specific to the ILEC.

#### Public Interest is Being Jeopardized

Circumstances, not rhetoric, clearly demonstrate that UNE rates set in Alaska for ACS companies have, at a minimum, contributed to a business environment that discourages investment in the deployment of infrastructure and the advancement of modern telecommunications services.

On April 18, 2002 ACS was called before the RCA to explain why it had refused to provide wireline service to some new customers in the Anchorage and Fairbanks areas.<sup>3</sup> Complaints were heard from contractors who needed service for new subdivisions and individuals who wanted second lines for Internet access. The ACS spokesperson explained that fiduciary responsibility required a careful assessment of investments and with a CLEC capturing a substantial percentage of loops at UNE rates substantially below its forward looking costs, ACS could not forecast a return on investment sufficient to recover the cost of installing the infrastructure. In response to a query from a member of the RCA, a contractor acknowledged that the CLECs had also declined to install wireline infrastructure. The contractor said he could understand ACS' quandary, but he still wanted service.

The Alaska public is already experiencing the impact of multiple providers in local exchange markets. The results have not always demonstrated the much touted lower prices and better services, but too often slower service, poorer service or no service.

## Conclusion

In the 1996 Act Congress declared a cautionary posture regarding competition in rural America. There is no part of this nation more rural than Alaska, but this state commission has refused to exercise care for rural consumers in its misplaced enthusiasm to be recognized as a national leader in opening markets to competition. The members of ATA foresee a decline in quality of service to their customers if they experience treatment similar to that of ACS. Thus, we support ACS' petition to preempt the RCA and establish cost-based UNE rates based on ACS' forward-looking cost study.

Respectfully submitted,

ALASKA TELEPHONE ASSOCIATION

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<sup>3</sup> RCA Docket U-01-37.